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UNITED STATES BANKRUPTCY COURT

SOUTHERN DISTRICT OF NEW YORK

Case No. 12-12020-mg

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In the Matter of:

RESIDENTIAL CAPITAL, LLC, et al.,

Debtors.

- - - - -x

United States Bankruptcy Court

One Bowling Green

New York, New York

March 25, 2016

9:19 AM

B E F O R E:

HON. MARTIN GLENN

U.S. BANKRUPTCY JUDGE

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Doc# 9226 Trial Regarding The ResCap Liquidating Trusts and
ResCap Borrower Claims Trust's Objection to Claim Nos. 112,
114, 416 and 417 Filed by Erlinda Abibas Aniel, Fermin Solis
Aniel, and Marc Jason Aniel. Marked Up Documents: 8475, 8820,
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Transcribed by: David Rutt
eScribers, LLC
700 West 192nd Street, Suite #607
New York, NY 10040
(973)406-2250
operations@escribers.net

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A P P E A R A N C E S :

MORRISON & FOERSTER LLP

Attorneys for ResCap Borrower Claims Trust

250 West 55th Street

New York, NY 10019

BY: JORDAN A. WISHNEW, ESQ.

JESSICA J. ARETT, ESQ.

APPEARING PRO SE:

ERLINDA ABIBAS ANIEL

1 P R O C E E D I N G S

2 THE COURT: All right, please be seated. We're here
3 in Residential Capital, number 12-12020. This is day 2 in
4 connection with the trial of the contested matter of the Aniel
5 claim.

6 All right, anybody have anything to say before we
7 begin today?

8 Nope. Okay, so we have one witness left: Ms. Aniel.
9 And let me just explain, before you come up, when someone like
10 yourself doesn't have a lawyer, there's obviously no one to ask
11 you questions. And what I typically do, because we've had a
12 series of these trials in ResCap matters, is you'll come up to
13 the witness stand, you'll be sworn, and I let you testify in
14 what's called the narrative form. Essentially, you're going to
15 explain the facts that you want me to know. It may be that
16 Mr. Wishnew may have objections; he will state them if he does.
17 I indicated yesterday, when I have trials that involve pro se
18 parties, people who are not represented by attorneys, I try to
19 provide some leeway because they're usually not really attuned
20 to the Rules of Evidence or other procedural rules.

21 Before you come up, Ms. Aniel, as I explained multiple
22 times yesterday, the issues in this trial were defined by my
23 prior opinion and by the joint pretrial-conference order, which
24 the parties signed and which the Court entered. So you need to
25 focus your testimony on those issues specifically identified

1 for trial, either in the prior opinion or the joint pretrial-
2 conference order.

3 When we finished yesterday, as you know, this is what
4 I refer to as a timed trial; each side had five hours for their
5 presentations. And when we concluded yesterday, I believe it
6 was -- an hour and two minutes was the amount of time that you
7 have remaining. The amount of time that Mr. Wishnew may take
8 in examining you doesn't count against your time; it's your
9 testimony. And then when we get to closing arguments, if you
10 want to make a closing argument, that's what your time is going
11 to count against. Okay?

12 MS. ANIEL: Okay. Thank you, Your Honor.

13 THE COURT: All right, so -- and what you should do is
14 you'll come up to the witness stand; bring any papers you want
15 to refer to. And we had numerous exhibits that were introduced
16 in evidence yesterday that were all in evidence. If there're
17 any documents, additional ones, that you're going to offer, you
18 have to make sure you identify by exhibit number what it is
19 you're referring to. If it's not in evidence, you'll have to
20 offer it in evidence if you intend to. If you have any notes
21 that you want to use, I assume -- I note, from watching you
22 yesterday, you were very well prepared and you had notes; you
23 can certainly bring those up with you. Okay?

24 MS. ANIEL: Okay. Thank you, Your Honor.

25 THE COURT: All right.

1 MS. ANIEL: Before I begin to be a witness, I would
2 like to apologize to you yesterday (sic) --

3 THE COURT: I don't want any apol -- you don't need to
4 apologize to me.

5 MS. ANIEL: -- because I'm kind of -- I researched; I
6 should not cross-examine my witness. So now I realize that
7 mistake. So I really apologize.

8 THE COURT: Well, no apology is necessary. And I
9 certainly didn't intend -- I wasn't mad at you at all. And I
10 don't mean -- I don't want you -- I try to be respectful of
11 witnesses but, when the issues for trial are defined, I also
12 try to keep everybody on track for those issues.

13 MS. ANIEL: I understand.

14 THE COURT: Okay?

15 MS. ANIEL: I understand.

16 THE COURT: So why don't you bring up whatever papers
17 you want. And you saw the routine: you'll come up, you'll be
18 sworn. You'll be either asked to swear or affirm, so --
19 because I know, for many people, they don't wish to swear, but
20 they affirm the truth of what they're saying. Okay?

21 MS. ANIEL: Okay. Thank you.

22 THE COURT: All right. And there is water up at the
23 witness stand.

24 Maybe somebody could come help her coming up. Okay?

25 Let somebody help you; you have a lot of paper there.

1 Okay?

2 Okay, so come on up, put your papers down, and just
3 stand there and raise your right hand, and the reporter will
4 administer the oath. Okay? Just, why don't you stand, raise
5 your hand. That's --

6 (Witness sworn)

7 THE COURT: All right. Mrs. Aniel, please have a
8 seat.

9 Okay, whenever you're ready, you can begin, okay?

10 MS. ANIEL: Okay. Good morning, everyone. My name is
11 Erlinda Abibas Aniel. I'm representing myself as pro se. My
12 story began in 2008 when I tried to dispute the late payment
13 that I was assessed by GMAC Mortgage, LLC. And I -- the reason
14 for me calling on the 2008, because there was, like, amount of
15 375 dollars. My monthly payment was 7,500-something. And if
16 you have a late payment, if they don't receive the payment
17 until the 15th of the month, I will be assessed by a person of
18 my mortgage, until payment.

19 So I called GMAC to clarify the things, and I said I
20 mail all my bills every 9th or 10th of the month, so there is
21 time for the mail to receive (sic) before the 15th, because
22 some of my bills was received on the 12th. And then they said
23 that they received it on the 16th. So I was asking, why you
24 have penalized me for that 375 dollars plus interest aside?
25 But these are plus interest. And then the customer service --

1 THE COURT: May I ask you this? How much was the
2 amount of your mortgage? How much was the mortgage?

3 MS. ANIEL: Payment?

4 THE COURT: No, not the payment. The total amount
5 that was -- the mortgage you had obtained.

6 MS. ANIEL: Two million.

7 THE COURT: Okay, two million. Okay. All right.

8 MS. ANIEL: And it was adjustable-rate LIBOR. And I
9 have to start from 1.25-percent monthly payment, like, for
10 three months, I think. It says on my --

11 THE COURT: Um-hum.

12 MS. ANIEL: And it would -- after five years, it would
13 increase my mortgage payment, and it has negative amortization,
14 meaning that whatever principal -- because I'm just paying the
15 interest of that particular loan, the two million. So whatever
16 negative on that payment, it will add on into my principal
17 balance. I only paid interest, okay, not the principal; only
18 interest. So whatever negative on that would go to my
19 principal balance.

20 And then during a conversation, I said I'm going to
21 pay that, I'm going to dispute that. And there is some kind of
22 very persistent (sic), by the customer service. I even asked
23 her name. Said, no, we don't give our name, we just say
24 "customer service". And I asked them, you know, if I could
25 modify my loans, and they said, no, ma'am, you cannot modify

1 the loan, because you have no hardship. I said, what do you
2 mean "hardship"? You don't -- you're always on time on paying
3 your mortgage. I said, you just told me that I was late for,
4 you know, one day, that's why you charged me 375 dollars. And
5 she said, no, you're on time but, only, you have to pay because
6 we received your payment one day behind the -- after the cut --
7 after the cutoff date of the 15th. And I said -- you have to
8 create hardship. I said, okay, so -- I said, okay, you have
9 to -- I have to create hardship in ninety days and then I have
10 to call them back after ninety days, to be approved for loan
11 modification.

12 So that's what -- because it was instigated by GMAC,
13 enticed me to default my loans. That's what I did, Your Honor.

14 MR. WISHNEW: Your Honor, objection.

15 THE COURT: Overruled.

16 MS. ANIEL: On -- in September, because I was already
17 late, on -- I did that; I did default, because it was
18 instigated by GMAC. And then by September, you know, I was
19 trying to look for an attorney to help me modify the loan --
20 help me modify the loan. And I paid money for the attorney,
21 and the attorney did his job; you know, they called GMAC. And
22 my lawyer is complaining it's so hard to get these people,
23 because at that time in 2008, that's where the crisis began,
24 the --

25 THE COURT: The financial crisis.

1 MS. ANIEL: The financial crisis began. And then the
2 lending -- you know, borrowing, lending, you know, they cut it
3 off. So I don't have -- we don't have a chance to refinance
4 our loan, because all the bank close the credit lending and we
5 have no -- we have no choice.

6 And at that time my husband was so angry to me
7 because -- I mean, I was the one doing the financial budgeting,
8 and he said that, why do you have to believe -- why do you have
9 to believe those people? And then after ninety days, I
10 received a late payment (sic) and they add on -- they add on
11 fees, GMAC. I owe a lot of fees that you cannot even afford to
12 pay, you know, aside from the late payment of ninety days,
13 which is total twenty-one days. They add more, like
14 foreclosure fees, attorney's fees, any fees, loan release, that
15 when you call them, you meet the customer service, they just
16 say something; it was scripted there. They just say something
17 differently; oh, Ms. Aniel, you default. I said, you know, you
18 were the one who told me this, to default in the first place.
19 And, Ms. Aniel, the same, the same; it's just like a puppet
20 that keep on repeating their words.

21 And I was, like, helpless because, you know, a lot of
22 paperwork, notice of default, assignment of the two thousand --
23 no, substitution of trustee, notice of default. So I kind of
24 like -- I rattle (sic). And that's why I hired the attorney.
25 And the attorney also complaining about GMAC, because he cannot

1 get the right people who would really, you know, do the
2 processing.

3 And all of a sudden, I received something, papers; I
4 thought it was loan-modification package. It's a packet of
5 short sale. So I call again and said, I'm not going to have to
6 short-sale my property, I want loan modification. And this
7 guy, this guy, loan customer service -- I think they're a
8 calling center. Okay? And they said, okay, I'm going to pass
9 this on that you'd like loan modification, you don't want short
10 sale. And after that, I keep on calling and calling; you know,
11 sometimes it disconnect.

12 It's so hard, Your Honor, at that time, you know. And
13 they're so crazy, and everyone were on default -- because I
14 thought I'm the only one who were in default. And then I read
15 in the newspaper that there was a financial crisis that was
16 created by Wall Street, by the bank, by the -- everyone. And
17 so I started --

18 THE COURT: May I ask you this? When did you buy your
19 house?

20 MS. ANIEL: I bought it in 2005, Your Honor; it's a
21 fixer-upper. I spent, like, 750- to remodel that house. And I
22 owe some money for my family and my friends. And everyone
23 doesn't care. Even I wrote a letter to my senator, Dianne
24 Feinstein. I wrote a letter to DOJ. I wrote every -- you
25 know, I tried my very best to do my best, okay, to go to my

1 politicians, to -- you know, to help me understand this crisis,
2 because nobody explained this to us. There were promise from
3 the loan servicer that they will, you know, do the loan
4 modification after I was defaulted. And now I realize I'm not
5 the only one that were promised. Millions of homeowners were
6 promised.

7 So I said, you know -- I feel bad but I said, oh, I'm
8 not the only one who has this kind of situation, because I was
9 so embarrassed, Your Honor, because no realtor, nothing on my
10 door, you know, and said, oh, we have -- from -- GMAC sent us
11 here, we have to sell your house. And --

12 THE COURT: Tell me again where the house is.

13 MS. ANIEL: Pardon me?

14 THE COURT: Tell me again where the house is.

15 MS. ANIEL: The house is located in Hillsborough,
16 California.

17 THE COURT: I'm sorry; where in California?

18 MS. ANIEL: Hillsborough, California.

19 THE COURT: Hillsborough.

20 MS. ANIEL: Yeah.

21 THE COURT: You're in California? Yeah.

22 MS. ANIEL: And I become reclusive, myself. So in
23 2009 I have no choice; I have to -- decided to file bankruptcy,
24 Your Honor, because our culture, when you file bankruptcy,
25 like, you are financially -- like, it's embarrassing and it's

1 kind of you're a failure financially. But I was forced. All I
2 need is loan modification; that's it. Now I have to dig into
3 this, why I was -- why they told me to foreclose. And for --
4 since 2008, I start digging, reading. And I found out that the
5 reason why they have to do that: because based on the pooling
6 and servicing agreement, the loan servicer has created an
7 assignment -- they call it assignment -- assumption,
8 assignment, recognition agreement between --

9 MR. WISHNEW: Objection, Your Honor. Relevance.

10 THE COURT: Overruled.

11 MS. ANIEL: -- between the trustee, which is HSBC,
12 Wells Fargo -- I'm sorry, Your Honor; not HSBC. Between Wells
13 Fargo, is master servicer; between Deutsche Bank, because in
14 the pooling and servicing (sic), Deutsche Bank is the seller;
15 and A (ph.) Security -- A is the buyer of those mortgages. And
16 then master servicer is the Wells Fargo. And the loan servicer
17 is GMAC. They made that contract that any loans that been in
18 default will be handled by GMAC.

19 On this agreement, can I do it as an exhibit, Your
20 Honor?

21 THE COURT: Sure.

22 MS. ANIEL: Assignment and recognition. Assignment,
23 assumption, and recognition agreement.

24 THE COURT: Is that in evidence yet?

25 MS. ANIEL: Pardon me, Your Honor?

1 THE COURT: Is that one of the exhibits that came into
2 evidence yesterday, or not?

3 MS. ANIEL: Yeah, I think -- I think so.

4 THE COURT: May I see what it is and I'll --

5 MS. ANIEL: Yeah. I'm sorry.

6 THE COURT: No, I don't think it was. Is this in your
7 exhibit binder?

8 MS. ANIEL: Yes, yes.

9 MR. WISHNEW: Exhibit 9, Your Honor.

10 THE COURT: All right.

11 All right, what Ms. Aniel has shown me is Exhibit 9,
12 Aniel Exhibit 9.

13 Okay, go on with your explanation.

14 MS. ANIEL: Yeah, explained there that any defaulted
15 loan or charged-off loan, they would have to create an account
16 number, an account -- bank account. So any default,
17 foreclosure, pre-payment penalties, foreclosure, payment
18 penalt -- you know, REO, if they liquidate that -- liquidation
19 and they collect money, they would pay that to the senior
20 certificate -- the one who holds the senior certificate will be
21 paid. Whatever remaining -- that's my understanding: whatever
22 remaining money on that, it goes to the lower certificate; my
23 understanding, goes to the trustee. That's my understanding,
24 you know. I believe on the document.

25 And at the same time, GMAC also received the loan

1 servicing, and also the credit-risk manager continued to
2 receive fee from out of that agreement. And then out of that
3 agreement, there's another agreement from Deutsche Bank,
4 between Deutsche Bank, HSBC trustee, and Wells Fargo. It's all
5 about swap transaction.

6 You know, did you hear about London Whale? That was
7 big news. So since my loan was part of the LIBOR, Your Honor,
8 okay, so they -- what I read about LIBOR scandal Whale is that
9 both banks -- I think those four banks are trying to manipulate
10 the rate.

11 MR. WISHNEW: Objection, Your Honor.

12 THE COURT: I'm going to sustain that objection
13 because you indicated that -- you didn't say that -- you didn't
14 say GMAC was a part of any agreement on that, or that that
15 was -- okay, so I'm going to sustain the objection. But go on
16 with your story.

17 MS. ANIEL: Okay. That's how also they would profit;
18 GMAC would also profit on that servicing -- on that contract,
19 because they are the loan servicer.

20 And then I found out also, based on the testimony of
21 Kathy Priore, that my deed of trust -- who did the deed of
22 trust, was just on the MIRST (sic) --

23 THE COURT: MERS.

24 MS. ANIEL: -- Mortgage Electronic Servicing --

25 THE COURT: Yeah. Recording --

1 MS. ANIEL: Or Recording. Yes.

2 THE COURT: Mortgage Electronic Recording Service.

3 MS. ANIEL: I cannot straight --

4 THE COURT: I know.

5 MS. ANIEL: -- that, Your Honor.

6 THE COURT: Okay.

7 MS. ANIEL: MERS. Thank you, Your Honor.

8 THE COURT: M-E-R-S is MERS.

9 MS. ANIEL: Yes. Uh-huh.

10 And then it was just sitting there since 2009. And
11 they are saying that my loan was already in the trash on 2007
12 and the cutoff date. You cannot add on a loan after the cutoff
13 date, because it violates the pooling and servicing agreement.
14 You cannot add on any loans at all.

15 What happened during this crisis --

16 THE COURT: Okay, let me -- I want to stop you because
17 I want -- we got to focus on the issues that are being tried.
18 I'm trying to let you tell your -- explain your story, and I
19 don't want to unduly interfere with it. But as happened
20 yesterday when you were cross-examining Ms. Priore or the other
21 witnesses, the pooling and servicing agreement doesn't have any
22 bearing on the issues that we're trying here. So, try and keep
23 your testimony focused on the issues that are part of this
24 trial, okay?

25 MS. ANIEL: Okay. Oh, the issue of Mira Smoot?

1 THE COURT: It's the issues that are in the trial.

2 MS. ANIEL: Yeah.

3 THE COURT: I'm trying to let you -- I'm trying not to
4 interrupt you, but you got to stay focused on what are the
5 issues for the trial.

6 MS. ANIEL: Okay. I was reviewing the 2008
7 substitution of trustee and then --

8 THE COURT: Okay, just stop for a second, okay? The
9 2008 substitution of trustee was introduced in evidence
10 yesterday as Exhibit E.

11 MS. ANIEL: Yeah. And I was looking on the one who
12 executed it; it was Steel Meers (ph.), but was never mentioned
13 Meers as a nominee for mortgagee. And I don't know -- Your
14 Honor, at that time I don't know who really owns my note,
15 because they're so reluctant to -- because every time I talked
16 to customer (sic), they don't know. So what I did, I wrote a
17 qualified written request many times, many times; I think,
18 three or four. And they would always answer me in different
19 tone: that I owe money, that -- in fact, I just received
20 recently that I owe money to HarborView, from Ocwen, 2006.
21 Even though Ocwen already give IRS notice, 1098 IRS notice that
22 my loan has been paid off, they still keep on going after me,
23 because I think the collector, they never upgraded their
24 information; that's why I was still harassed until now, Your
25 Honor.

1 THE COURT: May I ask you, are you still living in the
2 house?

3 MS. ANIEL: Yes, Your Honor.

4 THE COURT: Okay. Did you pay off the loan to -- did
5 you pay off the loan when Ocwen was servicing the loan?

6 MS. ANIEL: I received from -- see, what happened when
7 I was fil -- when I went -- when I filed in bankruptcy, and
8 then I disputed the proof of claim that was submitted by GMAC,
9 and the judge says -- I dispute it because they attach a note,
10 promissory note, saying that -- I said I want -- Your Honor, I
11 want to find out who owns my note. And the judge said, there's
12 no endorsement on the back of the note. And the judge says,
13 okay, there was no -- I cannot release the motion for relief
14 from stay, because they want motion for relief from stay. I
15 cannot do that until -- have to find out why is it that there's
16 no endorsement. That was in 2009, in September 2009, that they
17 filed that motion for relief from stay, and also proof of
18 claim.

19 And then at the same time the judge said, I'm not
20 going to do that. And then they sent me to another -- after
21 sixty months, they sent me to -- and the bankruptcy court stamp
22 "without recourse". That is on part of my exhibit, Your Honor.

23 THE COURT: May I ask this? Do you still receive
24 statements for monthly mortgage payments, from Ocwen?

25 MS. ANIEL: Yes, Your Honor, including 1st Place

1 Insurance. I told them don't -- I have my own insurance and
2 you have no right to ask me that.

3 THE COURT: What happened once Ocwen started servicing
4 really isn't an issue here, but I just want to know are you
5 paying the mortgage payments to Ocwen or not?

6 MS. ANIEL: No more.

7 THE COURT: Okay. Go ahead. Go ahead with your --
8 let's focus back. And I diverted you away from it. Let's
9 focus on the period when GMAC was servicing the loan. You
10 referred to the substitution of trustee, which is Exhibit E.
11 Why don't you --

12 MS. ANIEL: Yes.

13 THE COURT: -- pick up with your explanation.

14 MS. ANIEL: And then all of a sudden my promissory --
15 after six months, my promissory note was -- there was an
16 endorsement of my promissory note.

17 Then I kind of -- wow, this must be -- this must be
18 something else, because the first -- the foreclos -- now I know
19 who (sic) is this foreclosure. Foreclosure means -- that hold
20 in foreclosure means, because they just submitted every
21 documentation in the court, given to them by the client,
22 without even researching it through, Your Honor. You know, my
23 second loan was already paid; I have a second loan, Your Honor;
24 it was (sic) been paid in 2012. The lawyer of GMAC keep on
25 asking me that. I said, did you read my statement that it was

1 already paid? They come after me, the 500, even though there
2 is already reconveyance, there was already promissory note that
3 was been stop paid that point.

4 THE COURT: May I ask you, who was the second mortgage
5 with?

6 MS. ANIEL: Washington.

7 THE COURT: Washington Mutual?

8 MS. ANIEL: Mutual.

9 THE COURT: How much was the second mortgage?

10 MS. ANIEL: Half million.

11 THE COURT: Okay. And you paid that?

12 MS. ANIEL: No, I did not --

13 THE COURT: No?

14 MS. ANIEL: -- pay that. It was part of the
15 settlement from West Bank (ph.) -- from MemberCore (ph.); was
16 into receivership.

17 THE COURT: Okay.

18 MS. ANIEL: And --

19 THE COURT: So do you still receive monthly bills for
20 the second mortgage as well?

21 MS. ANIEL: Oh, no more, Your Honor.

22 THE COURT: Okay. All right, go ahead.

23 MS. ANIEL: And so the judge -- when I was -- I was on
24 Chapter 11, Your Honor, and doing it also on my own because I
25 had no money at the time because they were asking me 200,000 in

1 the preferred (ph.) Chapter 11. I don't even know Chapter 11,
2 what is Chapter 11, you know, so I have to study on my own.

3 And then the judge says, okay, we will convert your
4 case in 7. And the note on this particular house was -- how do
5 you call that -- was charged off and secured.

6 THE COURT: How much did you pay for the house when
7 you bought it?

8 MS. ANIEL: I paid it for 2,210,000. I spent 700-plus
9 on the repair. I cannot sell my property. I want to sell my
10 property. There is a defect on my title right now. Right now
11 I have criminal report there. No, I cannot sell, Your Honor,
12 because of these abuses by GMAC. It has to be stopped.

13 And the lawyers who is, you know, fighting on behalf
14 the loan servicer, they don't care. They play games to the
15 homeowners. They don't even read the document. Even the 2013
16 power of attorney they don't even read. I told that to
17 Mr. Wishnew that there is a fraudulent documentation that was
18 filed in this court, and he always say, we don't care.

19 MR. WISHNEW: Objection, Your Honor.

20 MS. ANIEL: Yes, I always -- that's why I was
21 surprised.

22 THE COURT: Sustained.

23 Go ahead with your story.

24 MS. ANIEL: No, I'm just, you know --

25 THE COURT: Focus on the facts when GMAC was servicing

1 your loan, okay? So you --

2 MS. ANIEL: GMAC --

3 THE COURT: -- you told me about the substitution of
4 trustee from 2008. What happened after that?

5 MS. ANIEL: So after 2008, there was assignment of the
6 deed of trust. Then I found out it says --

7 THE COURT: Okay, there was an assignment of the deed
8 of trust that was introduced in evidence yesterday as Exhibit
9 F; it was the assignment that was done in August of 2009.

10 MS. ANIEL: A security deed and recorded, I think,
11 9/21/2009.

12 THE COURT: Correct.

13 MS. ANIEL: And I filed my bankruptcy in February
14 2009. Okay? And they're not supposed to make that assignment
15 of the deed, because I was in the bankruptcy. They cannot
16 transfer beneficial interest.

17 THE COURT: Actually they can. It doesn't affect you.
18 They can -- they're permitted to do that when you're in a
19 bankruptcy. It's not an effort -- but let's go on with your
20 story.

21 MS. ANIEL: Oh, okay. And that's where I found out
22 that HSBC -- I said, what is this HSBC DALT? It says DALT
23 2007-OA5.

24 THE COURT: Just say -- so the record's clear, what
25 you're referring to is the 2009 assignment of the deed of

1 trust. MERS transferred the deed of trust to HSBC Bank for
2 DALT, D-A-L-T, 2007-OA5; that was a securitization trust that
3 held your loan. Okay.

4 MS. ANIEL: Yes, but I don't know securit -- but that
5 time I really don't know, because I know I owe money to
6 mortgagee. And I said, who is this DALT? Even under -- I
7 Google it. What is this Alt? I really don't understand. And
8 then suddenly I said, why is it like that on my deed of trust I
9 owe money to mortgagee? Now there was a transfer from MERS as
10 beneficiary -- MERS as a nominee for mortgagee.

11 Then I tried to figure out that MERS and mortgage
12 (sic) sold my property -- I understand, sold my property,
13 because the deed of trust -- and they're not together with the
14 deed -- note together with it. Right? So that's my
15 understanding. I said, probably it was sold in 2009. Okay?
16 But GMAC witnesses that my loan was on the trust in 2007. So
17 how -- why is it only in 2009 that they were able to transfer
18 that interest -- beneficial interest?

19 So now I have the conclusion that the trust is empty;
20 there is no transfer based on the pooling and servicing
21 agreement, because on the prospectus supplement --

22 MR. WISHNEW: Objection, Your Honor.

23 THE COURT: Overruled.

24 MS. ANIEL: -- there are a list of all the loans that
25 was included on the trust. And I'm going to tell you -- I'm

1 going to -- this is going to be my exhibit, Your Honor -- this
2 trust belonged to Kennedy (ph.) Family Trust Fund, if you read
3 the prospectus and the pooling and servicing agreement.

4 THE COURT: All right --

5 MS. ANIEL: Okay?

6 THE COURT: -- I'm going to sustain that last
7 objection, because what you're telling me now doesn't bear on
8 the issues for this trial. So, go ahead with your story.

9 MS. ANIEL: There's a lease of the loans. Whose loans
10 belong to the pooling and servicing agreement under the trust?
11 My loan was never there, and I could show it to Your Honor, if
12 you may.

13 THE COURT: I decided certain things in the earlier
14 opinion, and we're not going to revisit those issues now.

15 MS. ANIEL: Okay.

16 THE COURT: The issues for this trial are those four
17 that were listed -- that are listed in the joint pretrial-
18 conference order. I understand you feel strongly about these
19 additional facts, but let's stay focused on the issues for the
20 trial. Go ahead.

21 MS. ANIEL: And there was a call -- I received a lot
22 of call from (sic) my phone. That's why I was so scared on
23 my -- line (sic) phones. I was so scared to answer it anymore,
24 Your Honor, because, you know, sometimes it's a recording and
25 like a debt collector going after you about me not paying. And

1 even the previous foreclosure MERS lawyer during my bankruptcy
2 court -- you know, they would embarrass me, they would call me
3 a -- bad words, you know, that I'm not paying my mortgage. And
4 I keep saying, I don't owe any money to GMAC, you have to prove
5 to me who is the owner. They won't tell, until I find out in
6 September, recorded assignment of the deed in 2009.

7 I was -- the impression of the people in the
8 bankruptcy, and the impression of the judge at that time --
9 because I don't know if judges of the court knows about this
10 scam.

11 MR. WISHNEW: Objection, Your Honor.

12 MS. ANIEL: These are scam people.

13 THE COURT: Overruled.

14 MS. ANIEL: You know, how many --

15 THE COURT: Let's try and stay focused on the
16 issues --

17 MS. ANIEL: Yeah.

18 THE COURT: -- okay?

19 MS. ANIEL: And then in 2012, before GMAC filed
20 bankruptcy, I received another substitution of trustee; it was
21 still mortgage -- it was still been -- MERS was still executing
22 those in the name of mortgagee; it's not in the name of the
23 trust.

24 THE COURT: So the 2012 substitution of trustee was
25 introduced in evidence yesterday as Exhibit I, and it's --

1 MS. ANIEL: Yeah.

2 THE COURT: -- dated April 5th, 2012; and that's in
3 evidence.

4 Go ahead.

5 MS. ANIEL: Yes. And then there was a notice of --
6 notice of default. There was a notice of trustee sale. And I
7 have no choice. You know, this was after my bankruptcy.

8 THE COURT: Okay, the notice of default is Exhibit J
9 in evidence.

10 MS. ANIEL: J, yeah.

11 THE COURT: Go ahead.

12 MS. ANIEL: This was after the fact that my
13 bankruptcy -- I was destroyed with my bankruptcy, discharging
14 the two million as unsecured loans. And then they started the
15 process again, you know, to foreclose the property, because
16 they said that I still owe them the deed of trust. I said,
17 deed of trust, I don't owe any deed of trust, it's just
18 security of the note. If the note becomes void, so with the
19 deed of trust. They said, no, Ms. Aniel. I think the name of
20 that lady's Jan -- Janice -- Jan -- forget her name. But I
21 have a letter that I keep that.

22 So I said, all I ask from you is the reconveyance of
23 my property so that I could move on with my life. And they
24 said, no, your note was discharged but your deed of trust is
25 not discharged.

1 THE COURT: That's the law. The law is that the
2 personal liability on the note can be discharged in a
3 bankruptcy, but what's referred to is that the lien rides
4 through the bankruptcy, the lien still exists. And after the
5 bankruptcy closes, they can't recover from you as a personal
6 liability but they can foreclose on the property.

7 MS. ANIEL: Yeah, but I told them --

8 THE COURT: That's the law.

9 MS. ANIEL: Yeah, I agree with that. But I told them
10 that they separated my deed of trust and my note.

11 THE COURT: Okay. Let's go on with this. I
12 understand this is what you said, but let's stay focused on the
13 issues here.

14 MS. ANIEL: And then in 2012 there was -- before the
15 bankruptcy, there was kind of pressuring, pressuring; another
16 broker, sometimes two times, knocking on my door. And I was so
17 scared. Even the mailman, he did bring a lot of, you know,
18 those that have to sign. Like, I kind of get panicky, you
19 know, that, oh, my God, what's -- another thing, you know.
20 They don't offer anything of loan modification.

21 There was one letter that I received that I have to
22 call this number, like home ownership, something like that. I
23 tried to call but, Your Honor -- and you know what, the
24 customer service says, before we have to entertain you, you
25 have to pay your arrears, the arrears that they put on my

1 original notice, like, one million. So I have to pay one
2 million in order for me to try to modify the loan?

3 I mean, there is no good-faith effort for GMAC, you
4 know, to correct their mistake, even though you already
5 penalized them for 200 million, for wrongful -- for filing --

6 MR. WISHNEW: Objection, Your Honor.

7 MS. ANIEL: -- fraudulent documents in the bankruptcy.
8 That's the fact.

9 THE COURT: Sustained.

10 Ms. Aniel, you got to stay focused on the issues for
11 the trial. I know you feel very strongly about a lot of the
12 things, but we have to stay focused -- you have to stay focused
13 on the issues that are in this trial.

14 MS. ANIEL: In 2012, because of the pressure by the
15 debtor GMAC, my son, who is newly graduate law, passed the bar;
16 he was --

17 THE COURT: I thought you had help in this case,
18 because --

19 MS. ANIEL: No --

20 THE COURT: -- you had some very good legal arguments.

21 MS. ANIEL: No, Your Honor, I'm not a lawyer, Your
22 Honor. You know, you don't need to be a lawyer --

23 THE COURT: Okay. All right, let's stay --

24 MS. ANIEL: -- you know --

25 THE COURT: -- focused on the issues.

1 MS. ANIEL: Yeah, but I have to be lawyer that --

2 THE COURT: What --

3 MS. ANIEL: -- I understand what I'm reading.

4 THE COURT: Is your son practicing law?

5 MS. ANIEL: No, he was not. He cannot get a job,

6 because he was forced to file bankruptcy, Your Honor, 2012 --

7 THE COURT: All right, so let's --

8 MS. ANIEL: -- because --

9 THE COURT: -- let's stay focused on the issues.

10 MS. ANIEL: Um-hum. And I was crying to my son and
11 said, you know, you have -- I put your name on the deed of
12 trust and this is the only way that you have to stop this
13 wrongful foreclosure. And my son says, Mom, I don't owe any
14 money except my student loan, because I promised my son that
15 just --

16 THE COURT: Okay, let's stay focused on the issues for
17 the trial, okay?

18 MS. ANIEL: Yeah. And he has no choice; he has to
19 file bankruptcy.

20 THE COURT: Okay, but let's stay focused on this case,
21 okay?

22 MS. ANIEL: Okay. Oh, I'm just telling a story, Your
23 Honor. Okay.

24 THE COURT: I know. I know.

25 MS. ANIEL: I don't want to be emotional, Your Honor.

1 But I suffered -- I was separated to (sic) to my husband, Your
2 Honor, because of that. My husband was working in the federal
3 government. And he retired early, Your Honor. He had started
4 the retirement early. He went to the Philippines and never --
5 you know.

6 THE COURT: Okay, so let's stay focused on the issues
7 for here. Go ahead.

8 MS. ANIEL: Yeah, because of GMAC's and ETS's
9 fraudulent conduct, I suffered damages. I suffered wrongful --
10 because of wrongful --

11 THE COURT: But let me ask this.

12 MS. ANIEL: -- conduct.

13 THE COURT: I know you've -- your claim for wrongful
14 foreclosure remained after the original opinion that I wrote,
15 but the home's never been foreclosed, is that correct?

16 MS. ANIEL: Yes, Your Honor. I asked -- I even asked
17 Jordan, Jordan, all I need is that since there was already --
18 it was already reported to IRS -- I cannot file taxes, okay? I
19 talked to -- I told -- I talked to my accountant; there was a
20 report to the IRS that my loan has been paid off, two million
21 fifty-six.

22 THE COURT: Well, they filed something for debt
23 forgiveness because --

24 MS. ANIEL: Yes, but --

25 THE COURT: -- the personal liability was discharged

1 in the bankruptcy, but not the mortgage obligation.

2 MS. ANIEL: But the --

3 THE COURT: But let's focus on the issues here.

4 MS. ANIEL: Yeah, I don't want the IRS to go back to
5 me and, you know, they --

6 THE COURT: I can't help you on that. So let's stay
7 focused on the issues here.

8 MS. ANIEL: Yeah, the damage that they -- this debtor
9 did to me. And then yesterday -- it's true; that's what you
10 want, Your Honor -- the issue is if Mira Smoot has authority
11 as -- authority as an authorized officer of HSBC. She says she
12 was not an authorized (sic) of HSBC.

13 So all the documentation that was filed in the County
14 San Mateo, in the bankruptcy court, in other court, I had
15 proven to them that it was fabricated, it was not true. And
16 hopefully lawyers for the banks should scrutinize it's not all
17 about money; it's all about ethic and profession. You know,
18 you cannot just accept all this -- that's why they get paid
19 for: for accepting the case, to go through it.

20 THE COURT: Okay, anything else you want to tell me?
21 My law clerk's just handed me a note that you have twenty-five
22 minutes left.

23 MS. ANIEL: Oh.

24 THE COURT: And I want to -- I think you told me your
25 explanation for what happened --

1 MS. ANIEL: Yeah.

2 THE COURT: -- but I just want to -- and I want you to
3 be able to save some time for your closing argument. But is
4 there anything else, any other facts that you want to tell me
5 now?

6 MS. ANIEL: I think I already cover, Your Honor.

7 THE COURT: Okay. All right.

8 All right, Mr. Wishnew, you want to cross-examine?

9 MR. WISHNEW: Your Honor, I have no questions.

10 THE COURT: Okay. All right, so you can step down;
11 take the papers with you.

12 MS. ANIEL: Thank you, Your Honor.

13 THE COURT: You're welcome. Help your --
14 Are you her son?

15 MS. ANIEL: A friend, Your Honor.

16 THE COURT: Is that your son?

17 MS. ANIEL: Who?

18 THE COURT: No?

19 All right, can you help --

20 MS. ANIEL: Oh, my God, you're my son.

21 THE COURT: No. Whoever.

22 MS. ANIEL: Thank you.

23 THE COURT: Help her with her papers.

24 MS. ANIEL: Thank you.

25 THE COURT: And you can --

1 MS. ANIEL: Yeah.

2 THE COURT: -- go back.

3 MS. ANIEL: Uh-huh.

4 THE COURT: Okay. Take that binder, too, for her.

5 Okay?

6 All right. Thanks very much.

7 MS. ANIEL: Thank you, Your Honor.

8 THE COURT: All right. All right, Ms. Aniel, do you
9 have any other witnesses or evidence that you wish to present?

10 MS. ANIEL: No more, Your Honor.

11 THE COURT: Okay, so the term's for that that you
12 rest; that means you put any other --

13 Mr. Wishnew, is there anything else you want to put
14 in?

15 MR. WISHNEW: Your Honor, the Borrower Trust rests.

16 THE COURT: All right, so both parties have rested.

17 Let's take a ten-minute recess and we'll come back in.

18 And, Ms. Aniel, you can make a closing argument; you
19 have about twenty minutes to do that. I don't know that you
20 need all that time; I think I understand the issues. But you
21 can. So make some notes to yourself, what you want to tell me
22 in closing argument. Okay? And then after you make an
23 argument, Mr. Wishnew can go ahead and do that.

24 Okay, so we'll take a ten-minute recess. Make some
25 notes about what you want to say, okay?

1 MS. ANIEL: Thank you, Your Honor.

2 (Recess from 10:06 a.m. until 10:33 a.m.)

3 THE COURT: All right, please be seated.

4 All right, Ms. Aniel, would you like to make a closing
5 argument? And I'm going to limit each side to twenty minutes.

6 MS. ANIEL: Okay.

7 THE COURT: You don't have to use it all, but --

8 MS. ANIEL: It won't be thirty (sic) minutes, Your
9 Honor.

10 THE COURT: Okay.

11 MS. ANIEL: Again good morning to everyone. This is
12 the last stage of this trial, that the parties are allowed to
13 sum up the facts which they believe the evidence has
14 established, through the closing statement. And this is the
15 very reason why I'm standing in front of you right now.

16 I would like to go back to my opening statement I made
17 yesterday morning, where I stated that, and I quote,
18 "Nonetheless, since I'm the claimant, I took upon myself to
19 prove to the Honorable Court, by preponderance of evidence,
20 that Ms. Smoot has never been authorized to execute 2011
21 assignment of deed. And if ever such document exists, the same
22 is a void document that confers no right and imposes no
23 obligation." Now I am true to myself, and I have proven that.

24 Did I make it happen through my evidence? Yes, I did.
25 Ms. Smoot has never been authorized by the trustee, HSBC, in

1 signing the 2011 assignment of the deed, which is the very
2 issue, among others, in this trial. Truly, as Ms. Smoot
3 judicially admitted under her open-court testimony yesterday,
4 she admitted she signed it, and said that the questionable
5 document, as an officer -- her employer, GMAC. That is very
6 clear-enough evidence about the sheer (ph.) admission, which I
7 would characterize as more than preponderance evidence.

8 Under the foregoing circumstances, there is therefore
9 no more legal grounds or justifiable reason why my claims
10 identified as 416 and 417 should be objected, or denied for
11 that matter. Therefore, the objector should have allowed my
12 claims process and paid me in full the amount of my claims; in
13 objecting to and not allowing them, the objector committed a
14 gross injustice to me and my family.

15 Now what is the impact of this established fact that
16 Ms. Smoot did not have an authority on behalf of HSBC is a fact
17 of the wrongful foreclosure committed by GMAC and ETS for which
18 they should be held liable for damages as far as the other
19 causes of action are concerned: fraud, UCL, declaratory
20 relief, and wrongful foreclosure.

21 I respectfully submit, Your Honor, please, that this
22 issue is also established in my favor because of the fact that
23 the assignment of the deed in 2011, which was needed in order
24 to foreclose my home, was fraudulently manufactured with false
25 information. This was not only a misrepresentation against me

1 but for every homeowner in California and the whole nation.
2 It's in violation of the UCL, and I'm entitled to be paid
3 damages by them. How many damages I'm entitled to? On what
4 this may consist? I am submitting that I'm entitled to receive
5 actual compensatory consensual (ph.), moral, punitive and even
6 nominal or temporary damages, since they have grossly and
7 willfully violated my right as a homeowner and property owner.

8 As I stated, I can lose my home at any moment. Since
9 2008, I have been forced to litigate my claims against GMAC and
10 ETS. At my age -- I will be -- I'm a senior and I'm sixty -- I
11 will be sixty-four this coming July. I could not find any more
12 work when litigating my claim as a pro se. I have had great
13 expense litigating this claim in this court. I cannot sell my
14 property, because of the clouds on title caused by GMAC and
15 ETS. Thus, I should be fairly compensated for my damages.

16 My credit report has been damaged due to the fact that
17 I was forced to file bankruptcy because of the
18 misrepresentation by GMAC for my loan modification in 2008.
19 And my son was forced to file in 2012 in bankruptcy, to protect
20 his interests and the property on the deed of trust. And he
21 cannot find a job now as an attorney.

22 Finally, the Court must declare the 2009 and 2011
23 assignment of the deed void as a matter of law, because of the
24 clear misrepresentation of the document. This is important
25 because loan servicers are actively attempting to foreclose my

1 property and that they have and they rely on those assignments
2 to fore -- they have standing to foreclose in California.

3 I pray that Your Honor will examine the documents and
4 testimony presented today and rule in my favor. Thank you very
5 much.

6 THE COURT: Thank you, Ms. Aniel.

7 Ms. Arett, how did you know I was going to call on you
8 to do the closing argument?

9 MS. ARETT: Oh, you were planning on calling on me?

10 THE COURT: I really was.

11 MS. ARETT: Well, we have good fortune.

12 Jessica Arett of Morrison & Foerster, on behalf of the
13 Borrower Trust.

14 Your Honor, the evidence presented during the trial
15 has made abundantly clear that Ms. Smoot had authority to
16 execute the 2011 assignment and, as a result, the foreclosure
17 that was initiated by GMAC Mortgage --

18 THE COURT: Just slow down a little bit. Okay?

19 MS. ARETT: -- against the Aniels in 2012 was proper.

20 Witnesses from HSBC have validated their signatures
21 and testified to the validity of the power of attorney executed
22 in August 2008, which granted authority to the authorized
23 officers of GMAC Mortgage to execute assignments on HSBC's
24 behalf.

25 In addition, testimony and documents put into evidence

1 demonstrate that Ms. Smoot was an authorized officer of GMAC
2 Mortgage in 2011 --

3 THE COURT: Just a little slower. Okay? Just relax.
4 Okay?

5 MS. ARETT: Okay. I'm just --

6 THE COURT: I know. No, don't be nervous about it,
7 okay? Just slow down a little bit.

8 MS. ARETT: -- in 2011, and had authority to sign such
9 documents. Furthermore, Ms. Smoot explained how she examined
10 the chain of title and reviewed the power of attorney prior to
11 executing the 2011 assignment, to confirm that she had
12 authority to sign on HSBC's behalf.

13 Moreover, the Aniels have failed to put forward any
14 evidence to demonstrate the invalidity of the documents in
15 evidence and that GMAC Mortgage or ETS somehow acted improperly
16 in filing the notice of default and the notice of sale, in
17 2012. Additionally, the Aniels have not put forward any
18 evidence that they were damaged by the debtors' actions. The
19 Aniels acknowledge that no foreclosure sale on their property
20 was ever conducted by the debtors and that they continue to
21 live in the property, as Ms. Aniel testified today. As a
22 result, the Aniels have failed to carry their burden of proving
23 that they were harmed by the debtors' actions, and they are
24 therefore not entitled to a claim against the debtors' estates.
25 And therefore, the Borrower Trust asks that the Court expunge

1 and disallow the remaining claims in their entirety.

2 THE COURT: Right. Just let me ask you a few
3 questions, okay?

4 MS. ARETT: Okay.

5 THE COURT: So we did hear from three of the HSBC
6 witnesses yesterday. And if you look -- if you'll look at
7 Exhibit D, it's the limited power of attorney. You referred,
8 in your closing, to the testimony of the HSBC witnesses, but
9 just if you would briefly explain to me what the testimony was
10 that shows that this was authorized, that it was signed in
11 front of the witnesses and the notary. Okay? Just briefly.
12 Go ahead.

13 MS. ARETT: So I believe that Susie Moy, Nancy Luong
14 and Doris Wong all testified that when they were executing this
15 document, they were executing it in the same space and that
16 what would happen was that Susie Moy would bring the document
17 to Nancy Luong and Doris Wong, who would recognize Susie Moy's
18 signature, and then it would go to Nancy (sic) Nassar, who is
19 the notary, who we did not have testify.

20 THE COURT: All right. And I admitted in evidence
21 yesterday Court Exhibits 1, 2 and 3, which were the exemplars
22 of the signatures of the three HSBC witnesses who testified:
23 Moy, Luong, and Wong. And based on the Court's inspection of
24 Court Exhibits 1, 2 and 3, the Court concludes that the
25 signatures appearing on Exhibit D are in fact the signatures of

1 Moy, Luong, and Wong.

2 Go ahead.

3 MS. ARETT: And so I think that the testimony that
4 they provided yesterday was very clear that this document is --
5 that their signatures make this a valid document and that the
6 document is very clear that it gives power to GMAC Mortgage to
7 sign assignments of deeds of trust on behalf of HSBC.

8 THE COURT: Okay. Anything else you want to add?

9 MS. ARETT: I don't believe so, Your Honor.

10 THE COURT: All right, thank you very much.

11 All right, the matter is going to be deemed under
12 submission and the Court will enter an order or opinion in due
13 course. Thank you very much. We're adjourned.

14 MR. WISHNEW: Thank you for your time, Your Honor.

15 MS. ANIEL: Thank you, Your Honor. Thank you very
16 much.

17 (Whereupon these proceedings were concluded at 10:44 AM)

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I N D E X

WITNESS	EXAMINATION BY	PAGE
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C E R T I F I C A T I O N

I, David Rutt, certify that the foregoing transcript is a true
and accurate record of the proceedings.



DAVID RUTT

AAERT Certified Electronic Transcriber CET**D 635

eScribers

700 West 192nd Street, Suite #607

New York, NY 10040

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